UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

PITTSBURGH ALLEGHENY COUNTY
THERMAL, LTD.

Employer

and **Case** 6-RC-12479

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, STEAMFITTERS LOCAL UNION NO. 449, AFL-CIO[1]

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Pittsburgh Allegheny County Thermal, Ltd., a not-for-profit corporation with its sole place of business in Pittsburgh, Pennsylvania, is engaged in the generation, distribution and non-retail sale of steam for heating purposes. The Petitioner, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Steamfitters Local Union No. 449, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act, seeking to represent a unit, as amended at the hearing, of all full-time and regular part-time general maintenance employees and boiler operators employed by the Employer at its Stanwix Street facility and distribution systems located within Pittsburgh, Pennsylvania; excluding all office clerical employees and guards, professional employees and supervisors[2] as defined in the Act,

[1] The name of the Petitioner appears as amended at the hearing, with the inclusion of the words "Plumbing and" in front of the words "Pipe Fitting." These words were apparently inadvertently omitted when the name of the Petitioner was amended. I have taken administrative notice of the correct wording of the Petitioner's name.

[2] The parties stipulated, and I find, that President Robert Fazio, Plant Manager Robert Druga, Operations Manager Robert Hoinks and Staff Engineer Jerry Grieger are supervisors within the meaning of Section

and all other employees. The Intervernor, National Conference of Firemen and Oilers, Local 75, a/w Service Employees International Union,[3] hereinafter referred to as the Intervenor or Local 75, is the current collective-bargaining representative of the petitioned-for employees. A hearing officer of the Board held a hearing in this matter and the parties filed timely briefs with me.

As evidenced at the hearing and in the briefs, the only disagreement among the parties is whether the negotiations between the Employer and the Intervenor in May 2005 resulted in a contract which is a bar to the petition. The Employer and the Intervenor assert that their expired collective-bargaining agreement, a signed agreement, included provisions that the agreement continued month to month after the expiration date of June 1, 2005 and that any provision of the agreement could be modified at the expiration of the original term. Moreover, the Employer and the Intervenor assert that the only outstanding issue between the parties as of the expiration date was wages. In accordance with their rights under the collective-bargaining agreement, the parties submitted their proposals on wages to interest arbitration. The Petitioner, contrary to the Employer and the Intervenor, contends that any agreement reached between the Employer and the Intervenor fails to meet the well-established substantive requirements necessary to bar the petition.

I have considered the evidence and arguments presented by the parties as to the contract bar issue. I have concluded, as discussed below, that the agreement reached by the Employer and the Intervenor on or about May 26, 2005,[4] is insufficient to bar the petition. Accordingly, I have directed an election in a unit which consists of approximately 21 employees.[5]

2(11) of the Act based on their authority to hire, fire or effectively recommend such actions. The parties further stipulated that Terry McNiel is an office clerical employee who is properly excluded from the unit.

[3] The name of the Intervenor appears as amended at the hearing.

[4] All dates refer to 2005 unless otherwise indicated.

[5] The parties stipulated that, at the time of the hearing, there were “exactly” 21 employees in the unit.

To provide a context for my discussion of the issues, I will provide a brief overview of the relationship between the Employer and the Intervenor and a discussion of the negotiations for a successor collective-bargaining agreement. I will then present, in detail, the facts and reasoning that support my conclusion on the issue.

I. OVERVIEW

The Employer is engaged in the generation, distribution and non-retail sale of steam for heating purposes to various private, governmental and commercial customers located within Pittsburgh, Pennsylvania. The Employer has been in existence since 1982, when Duquesne Light Company sold its Allegheny Steam Heating division to the Employer. The Intervenor and the Employer have been parties to successive collective-bargaining agreements since 1983, the most recent of which was effective by its terms from June 1, 2002, to June 1, 2005.

The record establishes that when the Employer and Local 75 first entered into negotiations in 1983, the Employer's overriding concern was that it would be able to guarantee the uninterrupted generation of steam heat at an affordable price. The Employer saw this as critical to its survival.[6] Consequently, the parties negotiated language that the agreement would remain in full force and effect beyond and despite any scheduled expiration date, on a month-to-month basis, unless and until replaced by a new labor agreement between the parties or unless the facility was sold or closed permanently for legitimate business reasons. The agreement provided for either party's right to request immediate "interest" arbitration of any or all unresolved economic issues, and further stated that the arbitrator had the authority to choose between the parties' "last best offers" as to each unresolved economic issue. This language has remained unchanged in every contract since 1983.[7]

[6] The record indicates that Duquesne Light Company sold off its steam heating division to the Employer for $1.00 because the division could not be relied upon for uninterrupted service.

[7] In 1992, the parties utilized the interest arbitration procedure to resolve their inability to agree on the amount of wage increases.

The record reveals that prior to the expiration of the most recent contract, the Employer and the Intervenor met once, on May 16, to negotiate a successor collective-bargaining agreement. No agreement was reached and no other meetings were held. On that day, the Intervenor requested that the Employer submit its last best offer in writing. The Employer's Chief Negotiator, Eugene K. Connors, then delivered the Employer's "May 16, 2005 Company 'Best and Final' Proposal," which set forth all of the changes to the 2002-2005 agreement. This proposal was not signed by either party. The Employer advised Local 75 of its willingness to reallocate funds among the economic items as long as the cost of the package remained constant. Shortly thereafter, Local 75's membership unanimously rejected the Employer's offer.[8]

On May 18, Local 75's President called Connors, to propose that the Employer reformulate the wage increases such that employees would receive a somewhat reduced hourly wage increase in the first year so that group leaders could receive a 25 cent per hour increase. Connors did so and transmitted the reformulated offer to Local 75 with a cover letter bearing Connors' name. On May 24, the Employer reissued the original best and final offer after Local 75's President orally reported that the membership wanted to return to the original best and final offer. The Employer's offer was again accompanied by a cover letter from Connors.[9] No agreement was reached because the parties were apart on the amount of wage increases.[10]

There is conflicting testimony in the record as to the exact status of negotiations. Connors and Local 75's President assert that, as of May 24, they were in accord on all issues except the amount of the annual wage increase and which options the employees desired for

[8] The record establishes that, inasmuch as the unit employees work on different shifts, it took a few days for the two stewards at the facility to obtain the input of the entire unit.

[9] The copies of these letters dated May 18 and 24 from Connors to Local 75 introduced at the hearing are unsigned.

[10] The Employer's best and final proposal was to increase hourly wages by 60 cents per hour every year for five years. The Union's proposal, which was conveyed orally to the Employer, was that wages be increased by 75 cents per hour every year for three years, or 80 cents per hour each year if a 5 year contract was agreed upon.

medical, dental and vision insurance plans. Within the next several days, Local 75 advised Connors that the membership had decided to keep the existing medical plan despite its increased cost.[11] The membership was also agreeable to the new dental and vision insurance program offered by the Employer. After resolving the benefits issue, the only outstanding issue separating the parties as of June 1, according to the Employer and the Intervenor, was the amount of the hourly wage increase for employees.

The Petitioner's sole witness, who is one of the Local 75 shop stewards and a negotiating committee member, disputed the testimony that all issues other than wages had been resolved. However, the Petitioner did not elicit any specifics in this regard.

In any event, the record establishes that effective June 1, the Employer implemented the new dental and vision plans and continued the existing medical plan. Moreover, in accordance with Local 75's request during negotiations, the Employer also notified all employees by memorandum dated June 13, that "As part of the proposed PACT[12]/SEIU Local 75 Agreement" the job classification of "Working Foreman" had been eliminated, and that the position would now be designated as "Group Leader." The memo also delineated the duties of the group leader position.[13]

On June 8, Local 75 orally advised the Employer that it was invoking interest arbitration on the parties' wage proposals. On July 21, the parties agreed on the selection of an arbitrator. The interest arbitration hearing was not immediately scheduled inasmuch as the parties continued to attempt to resolve the wage issue. In this regard, Local 75 made several wage proposals, but all involved an increase in costs beyond the Employer's May 16 best and final economic package. Consequently, no agreement was reached, and on August 31, after the

[11] The Employer contributes 75 percent of the monthly cost of the insurance package, and the employees contribute 25 percent of the cost.

[12] PACT is an acronym for Pittsburgh Allegheny County Thermal.

[13] In accordance with Local 75's demand for benefit parity, the Employer also began requiring its management employees to contribute 25 percent of the cost of the insurance package.

filing of the petition in this matter, Connors wrote to the arbitrator to request dates for the interest arbitration hearing. The record reflects that thereafter the hearing was scheduled for September 30.

It is undisputed that other than the expired collective-bargaining agreement, there is no document signed by both the Employer and the Intervenor setting forth the terms of a successor collective-bargaining agreement. In support of its contention that a contract bar exists, Connors testified at the hearing that the signed agreement relied on by the Employer is the 2002-2005 collective-bargaining agreement.[14] Based on that agreement and the Employer's May 16 best and final proposal, as amended after the parties' discussions on May 18 and 24, all issues except wages were resolved prior to the expiration date of the collective-bargaining agreement. Pursuant to the terms of the 2002-2005 agreement the parties exercised their right to submit the wage issue to interest arbitration. The Employer also asserts that the existence of the new agreement is manifested by the fact that the agreed-upon changes in working conditions, such as the new dental and vision plans and increased premiums for medical insurance, were implemented as of June 1. Based on these factors the Employer and the Intervenor contend that a contract sufficient to bar the petition exists.[15]

II. TIMELINESS OF PETITION

The burden of proving that a contract is a bar is on the parties asserting the doctrine. Roosevelt Memorial Park, 187 NLRB 517 (1970). As described below, I find that the Employer and the Intervenor have not met their burden.

In Appalachian Shale Products Co., 121 NLRB 1160, 1161 (1958), the Board reexamined its contract bar rules in order to achieve "a finer balance between the statutory policies of stability in labor relations and the exercise of free choice in the selection or change of

[14] In its brief the Employer also asserts that "the requirement of a writing was satisfied by the parties' signature on the 2002 Agreement."

[15] As stated by the Employer in its brief, "the parties had a full agreement on all issues prior to June 1, 2005, including their agreement that an arbitrator, retroactive to June 1, 2005, would decide for them the contract's new wage rates." (Emphasis in original.)

bargaining representatives." Thus, "the doctrine's dual rationale is to permit the employer, the employees' chosen collective-bargaining representative, and the employees a reasonable, uninterrupted period of collective-bargaining stability, while also permitting the employees, at reasonable times, to change their bargaining representative, if that is their desire." Direct Press Modern Litho, Inc., 328 NLRB 860 (1999).

It is well settled that for an agreement to serve as a bar to an election, such agreement must satisfy certain formal and substantive requirements. The agreement must be signed by all parties prior to the filing of the petition that it would bar, and it must contain substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship. The Board has "long required" that these two elements be met because a finding of contract bar necessarily results in the restriction of the employees' rights to freely choose a bargaining representative. Waste Management of Maryland, Inc., 338 NLRB 1002 (2003). While an informal document which contains substantial terms and conditions of employment is sufficient, it must satisfy the other contract bar requirements. St. Mary's Hospital, 317 NLRB 89, 90 (1995); Farrel Rochester Division of USM Corporation, 256 NLRB 996, 999 (1981); Appalachian Shale Products Co., supra.

An oral agreement does not constitute a bar. Empire Screen Printing, 249 NLRB 718 (1980). Even where the parties consider a contract to be properly concluded and have put into effect some or all of its provisions, the Board will not find the contract to bar a rival petition. See Waste Management, supra, at 1003, citing Branch Cheese, 307 NLRB 239 (1992).

As to the requirement that the contract be signed by all the parties, the Board has held that the signatures need not be on the same formal document. Diversified Services, Inc. d/b/a Holiday Inn of Ft. Pierce, 225 NLRB 1092 (1976); Liberty House (AMFAC Corp.), 225 NLRB 869 (1976). The contract can also consist of an exchange of a written proposal and a written acceptance. Georgia Purchasing, Inc., 230 NLRB 1174 (1977). The Board has further found that even the initials of the parties satisfy the signature requirement. Television Station WVTV, 250 NLRB 198 (1980). However, as noted by the Board in Waste Management, supra, at 1003,

"This flexibility does not excuse the parties from the fundamental requirement that they signify their agreement by attaching their signatures to a document or documents that tie together their negotiations, by either spelling out the contract's specific terms or referencing other documents which do so."

For instance, in Seton Medical Center, 317 NLRB 87 (1995), the Board found that no contract bar existed because there was no signed document or documents evidencing the finalization of the parties' negotiation process and memorializing the terms of their collective-bargaining agreement. There the parties reached agreement on all outstanding issues, and the intervenor's negotiator prepared an unsigned summary of all tentative agreements which the membership ratified. The employer thereafter posted a notice informing employees of its new agreement, and implemented its provisions. Before the employer prepared the formal document, the intervenor's chief negotiators left the intervenor's employ, went to work for the petitioner and filed a petition to represent the employer's unit employees.

The Board declined to find a contract bar, concluding that although agreements need not be embodied in a formal document, there must exist a signed document identifying the totality of the parties' agreement and showing that their contract negotiations were concluded. The Board stated, "The single indispensable thread running through the Board's decisions on contract bar is that the documents relied on as manifesting the parties' agreement must clearly set out or refer to the terms of the agreement and must leave no doubt that they amount to an offer and an acceptance of those terms through the parties' affixing of their signatures." (Emphasis added) Seton Medical Center, Id.

The expired collective-bargaining agreement in this case expressly sets forth the parties' agreement to submit their unresolved economic proposals to interest arbitration and to be bound by the arbitrator's decision. As noted by the Intervenor in its brief, the Board found a contract bar in Stur-Dee Health Products, 248 NLRB 1100 (1980), where the parties agreed to submit the unresolved economic issues to interest arbitration. However, in Stur-Dee the parties embodied their agreement, along with the effective date of the agreement and the agreement

that the arbitrator's determinations be applied retroactively to the effective date of the agreement, in a letter signed by both parties. Moreover, Cooper Tank and Welding Corp., 328 NLRB 759 (1999), cited by the Employer and the Intervenor in their briefs, does not compel a different result. In Cooper Tank and Welding the Board found that the contract acted as a bar even though it did not contain specific wage rates. The contract in that case was signed by both parties before the filing of the petition, and the contract at issue set forth substantial terms and conditions of employment. Unlike the parties in Stur-Dee and Cooper Tank and Welding, the Employer and the Intervenor here have failed to produce a document or documents signed by both parties.

The relatively minor requirement that the parties sign a document (or exchange signed documents) reflecting the agreement and showing that they have reached accord on a total contract is, according to the Board, still necessary and appropriate to establish a contract bar. In fact, as noted herein, the Board considers this to be an "indispensable" and "fundamental" requirement.

The Employer cites Television Station WVTV, supra, and Georgia Purchasing, Inc, supra, in support of its argument that the signature requirement "should not be applied to lift the contract bar in the present case." However, neither of these cases supports the Employer's position. Unlike the parties in Television Station WVTV, the parties here did not initial any agreement reached. The Employer asserts, and the record shows, that these parties have not initialed their agreements in the past and that they have always acted informally. Such conduct is not inappropriate, but it will not serve to establish a contract sufficient to bar a rival petition.

The Employer further argues that an exchange of telegrams which it maintains did not bear signatures was found to constitute a contract bar in Georgia Purchasing. Initially, I note that the Board cites Georgia Purchasing in Waste Management, supra, and Seton Medical Center, supra, both times in support of the need for a signed document or exchange of signed documents. Thus, the decision in Georgia Purchasing is clearly not intended to obviate the need for a signed document. In any event, at best, the Employer's May 18 and 24 best and final

offers were accompanied by cover letters of the Employer's chief negotiator.[16] Although there is evidence that the Intervenor orally accepted the terms,[17] there is no document signed by or bearing the name of the Intervenor's negotiator to evidence this fact.

Based on the above, and the record as a whole, I find that there is no document signed by both parties which substantially sets forth the terms of the putative agreement between the Employer and Local 75, and therefore I cannot conclude that a contract bar to the instant petition exists.[18] Accordingly, I shall direct an election in the unit petitioned for herein.[19]

III. FINDINGS AND CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.

3. The labor organizations involved claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

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[16] As previously noted, the copies of the letters dated May 18 and 24, introduced at the hearing, are unsigned. It is noted that the only signed letter introduced at the hearing in this matter is the Employer's post-petition letter to the arbitrator seeking the scheduling of the interest arbitration hearing.

[17] Obviously, whether the parties reached an enforceable contract for other purposes is not at issue in this proceeding.

[18] I have declined to accept the Employer's argument in favor of waiving the signature requirement of the contract bar doctrine. To do so would inject into the doctrine the very uncertainty the Board has consistently rejected. Moreover, I note that the Board's decision in Direct Press Modern Litho, Inc., supra, cited by the Employer, is fact specific, and that the Board reached its contract bar determination in that case in the context of accommodating the policies of both the Act and the Bankruptcy Code.

[19] The parties stipulated that the petitioned-for unit is appropriate for the purposes of collective bargaining.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time general maintenance employees and boiler operators employed by the Employer at its Stanwix Street facility and distribution systems located within Pittsburgh, Pennsylvania; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Steamfitters Local Union No. 449, AFL-CIO; National Conference of Firemen and Oilers, Local 75, a/w Service Employees International Union; or neither. The date, time and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Two Chatham Center, Suite 510, 112 Washington Place, Pittsburgh, PA 15219, on or before October 7, 2005. No extension of time to file this list will be granted, except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 412/395-5986. Since the list will be made available to all parties to the election, please furnish a total of **three (3)** copies, unless the

list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) full working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so precludes employers from filing objections based on non-posting of the election notice.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to

the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001.[20] This request must be received by the Board in Washington by 5 p.m., EST (EDT), on October 14, 2005. The request may **not** be filed by facsimile.

Dated: September 30, 2005

/s/Gerald Kobell
Gerald Kobell, Regional Director

NATIONAL LABOR RELATIONS BOARD
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[20] A request for review may be filed electronically with the Board in Washington, D.C. The requirements and guidelines concerning such electronic filings may be found in the related attachment supplied with the Regional Office's initial correspondence and at the National Labor Relations Board's website, www.nlrb.gov, under "E-Gov."